

AGREEMENT FORM

2016 Happy Hollow Creek Emergency Bank Stabilization

This agreement, made this 11th day of October, 2016 at West Lafayette, Indiana, by and between the City of West Lafayette Board of Public Works (hereinafter referred to as the "City") and **Atlas Excavating, Inc.** (hereinafter referred to as the "Contractor").

WITNESSETH:

That in consideration of the mutual covenants hereinafter set forth, the City and the Contractor agree as follows:

Article 1: SCOPE OF WORK

The Contractor shall furnish all labor and tools and equipment on a time and material basis and do all things required for complete installation and construction in accordance with the plans, specifications and as directed. The plans and specifications shall be on file in the office of the City Engineer.

Article 2: PAYMENT

The City shall pay to the Contractor, in full and complete payment for all performance of the Contract, in current funds. Accepted work performed on a time and material basis shall not exceed the sum of **\$60,000.00 (sixty thousand dollars and zero cents)**, without prior written authorization. The final contract price will be determined by the accepted hours worked, the attached rate sheet (**Attachment A**) and materials invoice costs.

Said price shall be paid to the Contractor in one installment at the completion of the work.

Article 3: CONTRACT DOCUMENTS

The contract documents include this agreement, the preliminary plans dated June 27, 2016, and the Contractor's certification of insurance, together with plans and any subsequent addenda.

Said documents are hereby incorporated into and made a part of this agreement the same as if herein fully set forth.

Article 4: SEVERANCE

The intent of the parties is that this agreement be deemed entire in the sense that its purpose is to establish one price for the doing of the whole work, and that it be deemed severable in the sense that the voidance of any part or portion shall not void the remainder.

It is understood and agreed that partial payments may be made for the mutual convenience of the City and Contractor but shall not be construed as the City's acceptance of a part or portion of the work. Acceptance is to only in the manner prescribed in the General Conditions.

Article 5: RECORDS

The Contractor will maintain proper records for review by the City.

Article 6: DATE OF COMPLETION

The Contractor agrees that all work contained in the contract shall be complete on or before October 30, 2016.

Article 7: PREVAILING PARTY – ATTORNEY FEES

Notwithstanding any term or condition in this Contract to the contrary, in the event litigation is commenced to enforce any term or condition of this Contract, the prevailing party shall be entitled to costs and expenses of litigation including a reasonable attorney fee.

Article 8: ENGAGING IN ACTIVITIES WITH IRAN

By signing this Contract, Contractor certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5.

Article 9: E-VERIFY

Contractor shall comply with E-Verify Program as follows:

- a. Pursuant to IC 22-5-1.7, Contractor shall enroll in and verify the work eligibility status of all newly hired employees of Contractor through the E-Verify Program ("Program"). **Contractor** is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.
- b. **Contractor** and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Contractor or its subcontractors subsequently learns is an unauthorized alien. If Contractor violates this Section 7(b), the City shall require Contractor to remedy the violation not later than thirty (30) days after the City notifies **Contractor**. If Contractor fails to remedy the violation within the thirty (30) day period, the City shall terminate the contract for breach of contract. If the City terminates the contract, Contractor shall, in addition to any other contractual remedies, be liable to the City for actual damages. There is a rebuttable presumption that Contractor did not knowingly employ an unauthorized alien if Contractor verified the work eligibility status of the employee through the Program.
- c. If Contractor employs or contracts with an unauthorized alien but the City determines that terminating the contract would be detrimental to the public interest or public property, the City may allow the contract to remain in effect until the City procures a new contractor.
- d. **Contractor** shall, prior to performing any work, require each subcontractor to certify to **Contractor** that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Contractor determines that a subcontractor is in violation of this Section 7(d), **Contractor** may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by Contractor or the subcontractor.
- e. By its signature below, Contractor swears or affirms that it i) has enrolled and is participating in the E-Verify program, ii) has provided documentation to the City that it has enrolled and is participating in the E-Verify program, and iii) does not knowingly employ an unauthorized alien.

Article 10: NON-DISCRIMINATION

Contractor agrees:

- a. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;
- b. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;
- c. That the City may deduct from the amount payable to the contractor a penalty of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;
- d. If there is a second or any subsequent violation of the terms or conditions of this section, then this contract may be cancelled or terminated by City and all money due or to become due hereunder will be forfeited.

Article 11: LIQUIDATED DAMAGES

The Contractor and City recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the times specified in Article 6 above. The parties also recognize the delays, expense, and difficulties involved in providing in a legal or arbitration proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring and such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty), the City, in the form of a Change Order, shall deduct from the monies due the Contractor \$500.00 for each calendar day that expires after the time specified in Article 6 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the City, the City, in the form of a Change Order, shall deduct from the monies due the Contractor \$500.00 for each calendar day that expires after the time specified in Article 6 for completion and readiness for final payment until the Work is completed and ready for final payment.

Article 12: INSURANCE

The **CONTRACTOR** shall at its own expense maintain in effect during the term of this contract the following insurance with limits as shown or greater:

General Liability (including automobile) – combined single limit of \$1,000,000.00;

Workers' Compensation – statutory limit; and

Professional Liability for protection against claims arising out of performance of professional services caused by negligent error, omission, or act in the amount of \$1,000,000.00.

The **CONTRACTOR** shall provide Certificates of Insurance indicating the aforesaid coverage upon request of the **CITY**.

IN WITNESS WHEREOF we have set our hands the day and year first above written.

CONTRACTOR:



Casey Dillon
Atlas Excavating, Inc.



Digitally signed by Casey Dillon
Reason: I agree to the terms defined by the
placement of my signature on this document
Contact Info: caseyd@AtlasExcavating.com
Date: 2016.10.05 15:12:15-04'00'

WEST LAFAYETTE BOARD OF PUBLIC WORKS:

Sana G. Booker, President

Bradley L. Cohen, Member

Brooke E. Folkers, Member

Jason D. Huber, Member

Thomas J. Kent, Member

Attest:

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Nichole A. Foster, Deputy Clerk